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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

MM Docket No. 94-116  
RM-8507

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In the Matter of:

Amendment of Section 73.202  
(b), Table of Assignments  
FM Broadcast Stations:  
Jefferson City, Cumberland Gap,  
Elizabethton, Tennessee

TO THE COMMISSION:

**Comments on Notice of Proposed Rule Making**

WFSM, Inc., ("WFSM") licensee of station WCTU (FM),  
Tazewell, Tennessee herewith submits Comments in Opposition to  
the Commission's Notice of Proposed Rule Making in MM Docket  
No. 94-116 released October 5, 1994. Therein, the Commission  
proposed the substitution of Channel 256A at Jefferson City to

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List A B C D E

**Cumberland Gap and the modification of the Elizabethton,  
Tennessee allocation from 257C3 to 257C2 as follows:**

<b>City of License</b>	<b>Present</b>	<b>Proposed</b>
<b>Jefferson City, TN</b>	<b>257A</b>	<b>- none -</b>
<b>Cumberland Gap, TN</b>	<b>-none-</b>	<b>256A</b>
<b>Elizabethton, TN</b>	<b>257C3</b>	<b>257C2</b>

**The "Petitioners" herein seek to effect changes to the Commission's Table of Assignments so as to, apparently in both cases, afford themselves FM facilities in adjacent, larger, markets while purporting to serve other, smaller, communities. In the case of "Petitioners" request to remove 257A from Jefferson City and place it mutually exclusively as 256A in Cumberland Gap, TN, it is clear that the sought after market is Middlesboro, KY and not the almost non-existent seasonal tourist community of Cumberland Gap, TN. Additionally, the upgrade of Elizabethton's channel 257 from C3 to C2 appears to be aimed at better coverage to the major Tri-Cities (Johnson City, Kingsport, Bristol) SMSA, metro area. Also in this case, "Petitioners" would be better able to serve the larger market, while claiming service to the smaller one.**

**While "Petitioners" propose the removal of a community's and,**

**in fact, a county's only FM or nighttime service, no technical showing that no other channel or means to effect the Cumberland Gap allocation have been made. If it is possible to allocate a different channel to Cumberland Gap, the removal of the only service to Jefferson City would not be required. In that case the only weighing of benefit would be between expanded service to the already vastly served Tri-Cities metro area or removal of an only FM service to a community, Jefferson City. This weighing is well covered by precedent and clearly favors first service to a community.**

**Our assignment guidelines, however, also generally place a higher priority on the provision of a first full-time service to all areas of the country... See Report and Order, Knoxville, TN Et Al ; Docket 21211 ; RM-2715; RM-2906.**

**Even though the "Notice" indicates that Cumberland Gap, Tennessee is unincorporated, that is not the case. Cumberland Gap, TN is an incorporated municipality in the State of Tennessee and has an approximate population of 210 person. Further demographics should not be necessary to establish Cumberland Gap, TN to be "a very, very small town".**

**In order to comprehend the magnitude or lack thereof with Cumberland Gap as a City of License, consider the following objective, but less statistical data:**

**Cumberland Gap, TN has NO traffic lights.**

**According to the City Recorder of Cumberland Gap, TN, the town covers an area of 2.5 square miles.**

**Cumberland Gap, TN has the following business establishments:**

- 1- Gas Station**
- 1- Used Car Lot**
- 1- Motel**
- 3- Restaurants**
- 1- Pottery Shop**
- 1- Deli**
- 1- Package Store**

**In addition to being very small, Cumberland Gap, TN is also a seasonal community with what economic activity that exists occurring as tourism during a few months with most of the year remaining quite, economically, sparse. Clearly, the local business community is incapable of supporting any self-sustaining media.**

**The "Petitioners" claim that the relocation of their current license from Jefferson City to Cumberland Gap would allow for less competition from the "big city" [Knoxville, TN]. This is simply not the case since Jefferson City is not in the Knoxville market and is**

outside of the area normally marketed by Knoxville media. In fact the "Petitioners" would see much stronger competition from the plethora of stations in the Claiborne County, Tennessee (four commercial; one non-commercial) and Lee and Bell County, Kentucky areas than in Jefferson County. Currently, Jefferson County only has one other station and that station (WJFC) is only 500 Watt; Daytime Only. Clearly, if the "Petitioners" have any understanding of broadcast competition and markets they are no doubt attempting a defacto allocation to next-door (one mile) Middlesboro, KY in this proceeding.

In contrast to the small, seasonal, community of Cumberland Gap, Jefferson City, Tennessee has a population estimated to be in excess of Six-Thousand Persons (6,000) by its Chamber of Commerce in 1993. Jefferson City is the major town and trading center for a county population of 33,016 in the 1990 census and hosts a major Tennessee college campus (Carson-Newman University). The University is a substantial entity in the region and is active and ranked in several collegiate sports. Unfortunately for motorists traveling through Jefferson City and in contrast to Cumberland Gap, Jefferson City has many traffic lights!

**The FM assignment sought to be forever lost by the "Petitioners" is the only FM and the only nighttime radio serve in Jefferson County, TN. and is very much needed particularly for nighttime events such as elections and school sports.**

**The Rule Making proceeding that initially established the FM Table of Assignments and most other technical parameters and rules relating to FM broadcasting was concluded with the Third Report, Memorandum Opinion and Order on Docket No. 14185. In that proceeding, the guiding basis for decisions such as that required in this instant case was provided by the full Commission as follows:**

**In those cases where assignment of a channel at one location meant the denial of a channel for some other location, or locations, it has been necessary for the Commission to determine which of the two assignments would best bring about a "fair, efficient, and equitable distribution of radio services". In these situations, there has been a weighing of the usual factors involved in Section 307{b} cases, including other available aural transmission and reception services at or near the communities involved, the size of the respective communities, the distance from other urban centers of population, etc. 40 F.C.C. 759 ; Docket No. 14185; RM-94 ; FCC 63-735.**

**The "Petitioners" propose the location of their sought after Cumberland Gap, TN transmitter site at 36-36-56 NL ; 83-31-00 WL,**

**some 8.5 miles East of town. By virtue of the name of the town, that is Cumberland Gap, one would guess that the town is in a low area and represents a "Gap" in mountains. This is in fact the case and is the basis of the tourism attraction to the area. This same low laying "Gap" topography also raises technical questions.**

**The maximum 3.16 Mv/m (70 DBu) city grade contour for a full power (6 KW), full height (100 meter ; 328 feet) Class "A" FM is 16.6 KM or 10.3 miles. This distance is only true at the average height and power, while in reality, the radial or radials (as required) extending from and passing through the proposed city of license may have a lower antenna height above average terrain (ahaat) than the average. Therefore, with only the variance of 10.3 minus 8.5 miles or only 1.8 miles to cover the city of license from end to end and to compensate for a possibly lower average on the city radial, a serious question as to the "Petitioners" ability to meet the city grade coverage requirements of Section 73.315[a] exists. Whatsmore, an assumption has been made that "Petitioners" propose the use of maximum facilities when in fact no statement as to facilities, areas, and/ or coverages have been made by the "Petitioners".**

**In addition to the potential for less than city grade coverage, a**

**high likelihood of "Shadowing" clearly exists. The proposed city of license, Cumberland Gap, is low laying and surrounded by mountainous terrain. It is quite likely that serious shadowing problems will exist between the "Petitioners" city of license and 8.5 mile distant transmitter site. Very few allocations for Class "A" stations exist at this distance from the center of the city of license. "Petitioners" should, but have not, made a showing that another channel is not possible for allocation to Cumberland Gap and have failed to show that the substitution sought in this proceeding would provide adequate service to city of license.**

#### **In Recapitulation**


**The "Petitioners" seek in this proceeding to demolish nighttime and FM radio service in a very substantial Tennessee town and county area. Their only reasoning for this demolition is that they can provide new service to a community of 210 people and expand service into a well served major market area (Tri-Cities). In this request, no proof is given of whether it is even necessary to stop service in Jefferson City to provide service in Cumberland Gap**



**nor is it established that Channel 256A will serve Cumberland Gap with the prescribed signal (70 DBu) or without shadowing. Further, given that the "Petitioners" could establish technical viability, all reason and precedent clearly directs toward keeping the first FM service in a community of over 6,000 and aurally underserved instead of providing service to 210 persons in a well served area as a viable, reasonable, or equitable alternative.**

**WHEREFORE, the premises fully considered and for the foregoing reasons, it is respectfully requested that the Commission not amend Section 73.202 of the Rules by substituting Channel 256A for Channel 257A and from Jefferson City to Cumberland Gap, Tennessee and further that this proceeding be terminated by denial of the original petition without change to the FM Table of Assignments.**

**Respectfully submitted this 25<sup>th</sup> day of NOVEMBER, 1994.**

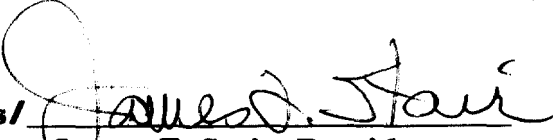
  
**James F. Stair; President  
WFSM, Inc. licensee WCTU (FM)  
P.O. Box 215  
Tazewell, TN 37879**

# **AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF ANDERSON

James F. Stair having been first duly sworn and upon oath deposes and states that he has read the foregoing "Comments on Notice of Proposed Rule Making" and to the best of his knowledge, information, and belief, the aforementioned document is true and conforms to the rules and regulations of the Federal Communications Commission.

/s/   
James F. Stair; President  
WFSM, Inc.

Subscribed and sworn to before me this 15 day of November, 1994.

/s/   
Notary Public

My commission expires:

8-22-95

## **Certificate of Service**

**I, James F. Stair, do hereby certify that I have this 25<sup>th</sup> day of NOVEMBER, 1994, sent by Certified United States mail, return receipt requested, a copy of the foregoing "Comments on Notice of Proposed Rule Making" to:**

**Eaton P. Govan III and  
Berton B. Cagle, Jr.  
P.O. Box 5188  
Johnson City, TN 37603**

**/s/   
James F. Stair**